

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re:

Applicant : Supermax Inc.
Serial No. : 76/684,704
Filed : December 7, 2007
Mark : THE MARK CONSISTS OF A PEPPERMINT
SCENT OR FRAGRANCE
Law Office : 106
TM Attorney : Chris Wells

RESPONSE TO OFFICE ACTION OF JANUARY 5, 2010

This is in response to the Examiner's rejection.

We have enclosed a declaration and examples of "look for" labels used on the packages for the goods.

As stated in re Clarke 17 USPQ 1238 *2 (TTAB 1990) scents are registrable.

"That is to say, fragrance is not an inherent attribute or natural characteristic of applicant's goods but is rather a feature supplied by applicant. Moreover, applicant has emphasized this characteristic of her goods in advertising, promoting the scented feature of her goods. Applicant has demonstrated that customers, dealers and distributors of her goods. Applicant has demonstrated that customers, dealers and distributors of her scented yarns and threads have come to recognize applicant as the source of these goods. In view of the unique nature of applicant's product, we do not believe that the failure of applicant to indicate in her promotional materials the specific scent or fragrance of her yarn (admittedly difficult to describe except in the manner that applicant has done so) is significant. In her advertisements and at craft fairs, applicant has promoted her products as having a scented nature. We believe that applicant has presented a prima facie case of distinctiveness of her fragrance mark".

The Clarke case was cited favorably by the U.S. Supreme Court in *Quality Co. v. Jacobson Products Co., Inc.*, 514 U.S. 159, 1155 Ct 1300, 1303 (Sup Ct. 1995).
The Supreme Court said:



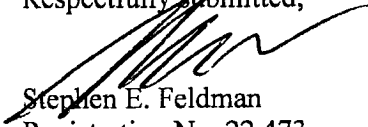
06-17-2010

"and even a particular scent (of plumeria blossoms on sewing thread). See, e.g., Registration Nos. 523, 616 (Apr. 4, 1950) and 916, 522 (July 13, 1971); In re Clarke, 17 U.S.P.Q. 2d 1238, 1240 (TTAB 1990). If a shape, a sound, and a fragrance can act as symbols why, one might ask, can a color not do the same?"

The Examiner cites four distributors of scented gloves Hayneedle, Cranberry, Superior Glove Works, Elbee Dental Supply. Hayneedle and Elbee are distributors of applicant's scented gloves and Cranberry and Superior appear to be infringers and are being investigated.

In view of the above the application is in condition for allowance and an action to that effect is respectfully solicited.

Respectfully submitted,


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DECLARATION

1. CK Tan, declares.
2. I am the Vice President, Manager of applicant.
3. We sell our peppermint scented gloves in the medical market. The scent is there to identify us and is not intended, nor does it overcome any other smell in the medical area. It is simply there to identify our gloves. Customers, dealers and distributors of the gloves recognize applicant as the source for the scented gloves.
4. We place labels on the boxes to inform the public that our scent is our trademark. our labels state: look for our peppermint scent TM
5. We respectfully request our application be allowed.

Dated: June 10, 2010
New York, New York



CK Tan

Refresh®

Latex Powder Free Mint Examination Gloves

M

**Honeycomb
Texture**

- Peppermint Scented
- Polymer Coated
- Non-Sterile
- Ambidextrous

100 Gloves by Weight

LOOK FOR OUR PEPPERMINT SCENT TM

⚠ CAUTION:
This Product Contains
Natural Rubber Latex
Which May Cause
Allergic Reactions.

AURE